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| 10/527,634 | 10/07/2005 | Martyn Vincent Twigg | JMYT-347US | 2199 |
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| RATNERPRESTIA | | | EXAMINER | |
| P.O. BOX 980 | | | NGUYEN, TU MINH | |
| VALLEY FORGE, PA 19482 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,634

Applicant(s)

TWIGG ET AL.

Examiner

TU M. NGUYEN

Art Unit

3748

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 13-21, 25, 30-34, 36 and 38-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 13-21, 25, 30-34, 36, 38, 40, 41 and 43-48 is/are rejected.
- 7) ☒ Claim(s) 3, 39 and 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20071228, 20080616
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. An Applicant's Amendment filed on June 11, 2008 has been entered. Claim 37 has been canceled; claims 1, 36, 39, 41, and 43 have been amended; and claim 48 has been added.

Overall, claims 1-3, 13-21, 25, 30-34, 36, and 38-48 are pending in this application.

Drawings

2. The drawings filed on October 15, 2007 have been approved for entry.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1, 13-21, 25, 34, 36, 38, 40, 41, and 43-47 are rejected 35 U.S.C. 103(a) as being unpatentable over Deeba (U.S. Patent 6,912,847) in view of Nakatani et al. (U.S. Patent 6,679,052).**

Re claims 1, 34, 36, 41, 43, 44, and 47, as shown in Figure 2, Deeba discloses a system and a process for operating said apparatus, the system comprising:

- a diesel engine configured to operate in a first, normal running mode (low load mode) to produce exhaust gas, and in a second mode (high load mode or higher temperature mode),

wherein when operating in the second mode, a value of at least one measurable parameter (exhaust gas temperature) indicative of a condition of the engine is outside a pre-determined range;

- means (fuel injector not shown but obviously must have) to switch engine operation between the two modes in response to at least one of an exhaust gas temperature, catalyst bed temperature, and a need to regenerate a filter; and

- an exhaust system disposed downstream of the diesel engine for receiving the exhaust gas therefrom, the exhaust system comprising a catalysed component comprising: (1) a flow-through, non-filtered substrate monolith (12) comprising a palladium (Pd) catalyst supported on a first support material (ceramic carrier) associated with at least one base metal promoter (cerium oxide) (see line 59 of column 8 to line 14 of column 9) and (2) a second substrate (15) comprising a filter which is disposed a platinum (Pt) catalyst (34) (see Figure 5 and lines 2-13 of column 10),

wherein the substrate monolith (12) is upstream of the filter (15) and the catalysed component is catalysed soot filter (15) having an oxidation catalyst (34).

Deeba, however, fails to disclose that the second mode produces an exhaust gas comprising an increased level of carbon monoxide (CO) relative to the exhaust gas produced in the first mode.

As shown in Figure 1, Nakatani et al. disclose an emission control apparatus for a diesel engine (100) comprising an emission control unit (200). As illustrated in Figure 2, Nakatani et al. teach that as an engine load increases, an exhaust gas air-fuel ratio is shifted toward stoichiometric ratio to accommodate the increase; and a CO concentration in the exhaust gas

emitted from the engine becomes higher. Thus based on this teaching by Nakatani et al., it would have been obvious to one having ordinary skill in the art at the time of the invention was made, to have realized that in the diesel engine of Deebea, a CO concentration in the exhaust gas during the second mode is higher than that during the first mode.

Re claim 13, the system of Deebea further comprises an engine control means, wherein the engine control means comprises an engine control unit (not shown but obviously must have).

Re claim 14, in the system of Deebea, the means for switching between the two modes switches between the first mode and the second mode when the temperature of the supported Pt catalyst is $< 250^{\circ}\text{C}$ (see at least lines 6-13 of column 14).

Re claim 15, in the system of Deebea, the Pd catalyst and the Pt catalyst are both disposed on the same support material (ceramic carrier).

Re claims 16-21, in the system of Deebea, the at least one base metal promoter is selected from a reducible oxide, wherein the at least one reducible oxide is selected from the group consisting of MnO_2 , Mn_2O_3 , Fe_2O_3 , SnO_2 , CuO , CoO , and CeO_2 and mixtures thereof (see lines 10-12 of column 9), wherein the reducible oxide is dispersed on the first support material (ceramic carrier).

Re claims 25 and 40, in the system and process of Deebea, the first support material is selected from the group consisting of alumina, silica-alumina, ceria, magnesia, titania, zirconia, a zeolite, and mixtures, composite oxides or mixed oxides of any two or more thereof (see lines 3-6 of column 9).

Re claim 38, in the system of Deebea, the Pt catalyst is supported on a second support material (lines 17-19 of column 8).

Re claim 45, in the system of Deeba, the substrate monolith further comprises a second platinum (Pt) catalyst (see lines 3-14 of column 9).

Re claim 46, in the system of Deeba, the catalysed component is the NO oxidation catalyst whereby the filter is located downstream of the catalysed component (see lines 15-23 of column 9).

5. Claims 2, 32, 48 and 30, 31, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deeba as applied to claims 1 and 38, respectively, above, in view of legal precedent.

Re claims 2 and 48, the system of Deeba discloses the invention as cited above, however, fails to disclose that the engine is configured to produce exhaust gas comprising more than 2000 ppm CO when running in the second mode.

Deeba disclose the claimed invention except for specifying an optimum range of carbon monoxide concentration of more than 2000 ppm to regenerate the catalysed soot filter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a specific optimum range of CO concentration, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Re claims 30-33, the system of Deeba discloses the invention as cited above, however, fails to disclose that the catalysed component comprises from 30 to 300 gr/ft³ Pd and from 30 to 300 gr/ft³ Pt, a supported catalyst part of the catalysed component contains from 0.1 to 30.0% by combined weight of Pt and Pd based on the combined total weight of the supported Pd catalyst and the supported Pt catalyst, the supported catalyst part of the catalysed component contains a

weight ratio of from 95:5 to 10:90 Pd :Pt, or the supported catalysts contain from 0.1 to 10% Pt by weight and from 0.1 to 20% Pd by weight based on the combined total weight of the supported catalysts.

Deeba disclose the claimed invention except for specifying an optimum range of Pt and Pd densities, percentage weight, and weight ratio. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a specific optimum range of Pt and Pd densities, percentage weight, and weight ratio, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Allowable Subject Matter

6. Claims 3, 39, and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with respect to the references applied in the previous Office Action have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner has failed to establish a *prima facie* case of obviousness to show that the CO level for a diesel engine during a high engine load is larger than the CO level during a low engine load (page 12 of the Applicant's Amendment), the examiner respectfully disagrees.

The examiner has supplied the reference of Nakatani et al. (U.S. Patent 6,679,052) to establish such *prima facie* case of obviousness.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Prior Art

9. The IDS (PTO-1449) filed on December 28, 2007 and June 16, 2008 have been considered. An initialized copy of each is attached hereto.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of one patent: Masaki et al. (U.S. Patent 4,123,901) further disclose a state of the art.

Communication

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Tu Nguyen whose telephone number is (571) 272-4862.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Thomas E. Denion, can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TMN
January 30, 2009

/Tu M. Nguyen/
Tu M. Nguyen
Primary Examiner
Art Unit 3748